

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION
No. 7:09-CR-72-D
No. 7:15-CV-24

DENNIS STEPHEN JOHNSTON,)
)
Petitioner,)
)
v.) **ORDER**
)
UNITED STATES OF AMERICA)
)
Respondent.)

Dennis Stephen Johnston (“Johnston”) already filed and lost a motion under 28 U.S.C. § 2255 attacking his conviction and sentence. See [D.E. 61]. The Fourth Circuit has not authorized Johnston to file a second section 2255 motion.

Johnston’s latest motion continues to attack his sentence. See [D.E. 68]. The court construes Johnston’s motion as successive under section 2255. This court lacks subject-matter jurisdiction to consider the motion. See, e.g., 28 U.S.C. § 2255(h); Burton v. Stewart, 549 U.S. 147, 152–53 (2007) (per curiam); In re Williams, 364 F.3d 235, 238 (4th Cir. 2004); United States v. Winestock, 340 F.3d 200, 205 (4th Cir. 2003). Thus, the court dismisses the motion. Alternatively, if the court has jurisdiction, the motion lacks merit. See [D.E. 71] 5–6.

In sum, the court GRANTS the government’s motion to dismiss [D.E. 70] and DISMISSES Johnston’s motion [D.E. 68] for lack of subject-matter jurisdiction as successive. Alternatively, the motion lacks merit. The court DENIES a certificate of appealability. See 28 U.S.C. § 2253(c); Miller-El v. Cockrell, 537 U.S. 322, 336–38 (2003); Slack v. McDaniel, 529 U.S. 473, 484 (2000).

SO ORDERED. This 21 day of June 2017.

James C. Dever
JAMES C. DEVER III
Chief United States District Judge